

SENATE BILL 2486  
By Wallace

AN ACT to amend Tennessee Code Annotated, Title 62, relative to the "Commercial Real Estate Broker Lien Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding Sections 2 through 7 of this act as a new chapter thereto.

SECTION 2. This act shall be known and may be cited as the "Commercial Real Estate Broker Lien Act".

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Affiliate broker" means any person engaged under contract by or on behalf of a licensed broker to participate in any activity included in subdivision (2);

(2) (A) "Broker" means any person who for a fee, commission, finders fee or any other valuable consideration, or with the intent or expectation of receiving the same from another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange for any real estate or of the improvements thereon or any time-share interval as defined in the Tennessee Time-Share Act, compiled in Title 66, Chapter 32, Part 1, collects rents or attempts to collect rents, auctions or offers to auction, or who advertises or holds himself out as engaged in any of the foregoing;

(B) "Broker" also includes any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell such real estate or any part thereof, in lots or parcels or

other disposition thereof. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both;

(3) "Commercial real estate" means any real estate other than:

(A) real estate containing one (1) to four (4) residential units; or

(B) real estate on which no buildings or structures are located and is zoned for single-family residential use.

Commercial real estate shall not include single-family residential units such as condominiums, townhouses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit by unit basis even though these units may be a part of a larger building or parcel of real estate containing more than six (6) residential units; and

(4) "Real estate" means and includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

SECTION 4. (a) Any broker shall have a lien, upon commercial real estate or any interest in such commercial real estate, in the amount that the broker is due:

(1) under a written instrument signed by the owner of an interest in the commercial real estate or the owner's duly authorized agent;

(2) under a written instrument signed by a prospective buyer or prospective tenant or their respective duly authorized agent as to the purchase, lease, or other conveyance to the buyer or tenant of an interest in the commercial real estate; or

(3) under a written instrument signed by a prior owner of an interest in the commercial real estate or the owner's duly authorized agent, if:

(A) prior to the sale or other conveyance of the property by such prior owner, the broker has recorded, with the register of deeds in the county in which the property is located, either a copy of the written instrument signed by the prior owner or owner's duly authorized agent upon which the claim for commission is based or a memorandum of such instrument;

(B) the broker has, prior to sale or other conveyance of the property by the prior owner, served written notice of recording of such instrument or memorandum on the prior owner of the property at the time and in the manner described in subsection (f) of this section; and

(C) the broker's right to the commission ripens after the sale or other conveyance of the property by the prior owner.

The lien shall be available to the broker named in the instrument signed by the owner, buyer, or tenant and not to an employee, affiliate broker, or other independent contractor of the broker.

(b) The lien under this act shall attach to the commercial real estate, or any interest in the commercial real estate upon:

(1) the broker being otherwise entitled to a fee or commission under a written instrument signed by the owner, buyer, tenant, or their respective duly authorized agent, as applicable; and

(2) Except as provided in subsection (c), (d), or (e), the broker recording a notice of lien in the register of deeds office of the county in which the real property, or any interest in the real property, is located prior to the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien. The lien shall attach as of the date of the recording of the notice of lien and does not relate back to the date of the written agreement.

(c) When payment to a broker is due in installments, a portion of which is due only after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due after the transfer or conveyance (including the execution of a lease) may be recorded at any time subsequent to the transfer or conveyance of the commercial real estate and prior to the date on which the payment is due but shall only be effective as a lien against the commercial real estate to the extent moneys are still owed to the transferor by the transferee. A single claim for lien may be recorded claiming all moneys due under an installment payment agreement and shall be valid and enforceable as it pertains to payments due after the transfer or conveyance, but shall only be effective as a lien against the commercial real estate to the extent that moneys are still owed by the transferor to the transferee. The lien shall attach as of the recording of the notice of lien and does not relate back to the date of the written agreement.

(d) In the case of a lease, any notice of lien for those payments due after the execution of the lease may be recorded at any time subsequent to the execution of the lease and prior to the date on which the payment is due. Provided, that if the transferor personally serves written notice of the intended execution of the lease on the broker entitled to claim a lien at least ten (10) days prior to the date of the intended execution of the lease, the notice of lien must be recorded before the date indicated in such notice for the execution of the lease. The lien shall attach as of the recording of the notice of lien and does not relate back to the written agreement.

(e) If a broker has a written agreement with a prospective buyer as provided in subdivision (a)(2) of this section, then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the broker in the register of deeds office of the county in which the real property, or any interest in the real property, is located within ninety (90) days after the purchase or other conveyance or transfer to the buyer. The

lien shall attach as of the date of the recording of the notice of lien and does not relate back to the date of the written agreement.

(f) The broker shall, within ten (10) days of recording his notice of lien, either mail a copy of the notice of lien to the owner of record of the commercial real estate by registered or certified mail, return receipt requested, or personally serve a copy of the notice of lien on the owner of record or his agent. If the lien is recorded within ten (10) days prior to closing, the broker is not required to mail or personally serve a copy of the notice of lien. Mailing of the copy of the notice of lien is effective if mailed by registered or certified mail, return receipt requested, to the address of the commercial real estate that is the subject of the notice of lien. Mailing of the copy of the notice of lien is effective when deposited in a United States mailbox with postage prepaid. The broker's lien shall be unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the manner required by this section.

(g) A broker may bring suit to enforce a lien in chancery or circuit court in the county where the property is located by filing a complaint and sworn affidavit that the lien has been recorded.

(h) The person claiming a lien shall, unless the claim is based upon continuing obligations in a lease or upon an option to purchase or lease the commercial real estate, commence proceedings by filing a complaint within two (2) years after recording the lien. Failure to commence proceedings within two (2) years after recording the lien shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may such claim be asserted in any proceedings under this act.

(i) A person claiming a lien based upon an option to purchase or lease shall, within six (6) months after the transfer or conveyance of the commercial real estate under the exercise of the option to purchase or lease, commence proceedings by filing a complaint. A person claiming a lien based upon a continuing obligation in a lease shall,

within six (6) months after the date when the obligation is due to be fulfilled, commence proceedings by filing a complaint. In either instance, failure to commence proceedings within this time shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may such claim be asserted in any proceedings under this act.

(j) A complaint under this section shall contain a brief statement of the contract or agreement upon which the lien is founded, the date when the contract or agreement was made, a description of the services performed, the amount due and unpaid, a description of the property that is subject to the lien, and other facts necessary for a full understanding of the rights of the parties. The plaintiff shall make all interested parties, of whose interest the plaintiff is notified or has knowledge, defendants to the action, and shall issue summons and provide service as in other civil actions. When any defendant resides or has gone out of the state, or on inquiry cannot be found, or is concealed within this state so that process cannot be served on such defendant, the plaintiff shall cause notice to be given to such defendant, or cause a copy of the complaint to be served upon such defendant in the manner and upon the same conditions as in other civil actions. Failure of the plaintiff to provide proper summons or notice shall be grounds for judgment against the plaintiff with prejudice. All liens claimed under this act shall be foreclosed as provided in Title 25, Chapter 5.

(k) The notice of lien shall state the name of the claimant, the name of the owner, a description of the property upon which the lien is being claimed, the amount of which the lien is claimed, and the real estate license number of the broker. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signator. The notice of lien shall be signed by the broker or by a person authorized to sign on behalf of the broker and shall be verified.

(l) Whenever a notice of lien has been filed with the county register of deeds and a condition occurs that would preclude the broker from receiving compensation under

the terms of the written agreement on which the lien is based, the broker shall provide to the owner of record, within ten (10) days following demand by the owner of record, a written release or satisfaction of the lien.

(m) Upon written demand of the owner, lienor, or other authorized agent of the owner or lienor, served on the broker claiming the lien requiring suit to be commenced to enforce the lien or answer to be filed in a pending suit, a suit shall be commenced or answer filed within thirty (30) days thereafter, or the lien shall be extinguished. Service may be by registered or certified mail, return receipt requested, or by personal service.

(n) Whenever a notice of lien has been filed with the county register of deeds and is paid, or where there is failure to institute a suit to enforce the lien within the time provided by this act, the broker shall acknowledge satisfaction or release of the lien in writing, on written demand of the owner within five (5) days after payment or of expiration of the time in which the lien was to be filed.

SECTION 5. The cost of proceedings brought under this act, including attorneys' fees, costs, and pre-judgment interest due to the prevailing party shall be borne by the non-prevailing party or parties. When more than one (1) party is responsible for costs, fees, and prejudgment interest, the costs, fees, and pre-judgment interest shall be equitably apportioned by the court among the responsible parties.

SECTION 6. Prior valid recorded liens, mortgages, and other encumbrances shall have priority over a broker's lien. Such prior recorded liens, mortgages, and encumbrances shall include, without limitation:

(1) a valid mechanic's lien claim that is recorded subsequent to the broker's notice of lien but which relates back to a date prior to the recording date of the broker's notice of lien; and

(2) prior recorded liens securing revolving credit and future advances of construction loans.

SECTION 7. Except as otherwise provided in this section, whenever a claim for lien has been filed with the county register of deeds that would prevent the closing of a transaction or conveyance, an escrow account shall be established from the proceeds from the transaction or conveyance in an amount sufficient to release the claim for lien. The requirement to establish an escrow account, as provided for in this section, shall not be cause for any party to refuse to close the transaction. These moneys shall be held in escrow until the parties' rights to the escrowed moneys have been determined by written agreement of the parties, a court of law or other process as may be agreed to by the parties. Upon funds in the amount of the claimed lien being placed in escrow, a release of the claim for lien shall be provided by the broker claiming the lien. Once the broker has provided the release, the broker shall have an equitable lien on the funds which were placed in escrow or are to be placed in escrow. The parties are not required to follow this escrow procedure if alternative procedures which would allow the transaction to close are available and are acceptable to the transferee and the transferor. If the proceeds from the transaction are insufficient to release all liens claimed against the commercial real estate, including the broker's lien, then the parties are not required to follow this escrow procedure.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.